



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 100**

**[Docket Number USCG-2016-1041]**

**RIN 1625- AA08**

### **Special Local Regulation; Fautasi Ocean Challenge Canoe Race, Pago Pago Harbor, American Samoa**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

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**SUMMARY:** The Coast Guard is establishing a permanent special local regulation for the Fautasi Ocean Challenge canoe races in Pago Pago Harbor, American Samoa. These annual events historically occur four separate weekend or holiday days each year. The annual dates include one day in April and three separate days between Veteran's Day and the Thanksgiving holiday weekend. Each of the four days, canoe races are held between 7 a.m. to 4 p.m. This action is necessary to safeguard the participants and spectators, including all crews, vessels, and persons on the water in Pago Pago Harbor during the event. This regulation will functionally close the port to vessel traffic during the race, but will not require the evacuation of any vessels from the harbor. Entry into, transiting, or anchoring in the harbor would be prohibited to all vessels not registered with the sponsor as participants or not part of the race patrol, unless specifically authorized by the Captain of the Port (COTP) Honolulu or a designated representative. Vessels who are already moored or anchored in the harbor seeking permission to

remain there shall request permission from the COTP unless deemed a spectator vessel that is moored to a waterfront facility within the regulated area. The area concerned for this permanent special local regulation is described below.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-1041 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Commander John Bannon, Waterways Management Division, U.S. Coast Guard Sector Honolulu; telephone (808) 541-4359, email [john.e.bannon@uscg.mil](mailto:john.e.bannon@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

On January 18, 2017, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the Federal Register (82 FR 5480) entitled “Special Local Regulation; Pago Pago Harbor, American Samoa.” In the NPRM we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this canoe race event. During the comment period that ended February 17, 2017, we received no comments.

This event will consist of a series of three single race days within Pago Pago Harbor each November and one race day in April. The event will include 50 longboats with paddling crews of 30-50 persons each. It is anticipated that a large number of spectator pleasure craft will be drawn to the event. Spectator vessels and commercial vessel traffic would pose a significant safety hazard to the longboats, longboat crew members, and other persons and vessels involved with the event due to the longboats limited maneuverability within the port. Traditionally, the event is held on Fridays, Saturdays, or holiday week days, pending when Veteran's Day falls each year, and are dependent on local weather; both factors will dictate the event days each year.

### **III. Legal Authority and Need for Rule**

The Captain of the Port, Honolulu (COTP), is establishing a permanent special local regulation to minimize vessel traffic in Pago Pago Harbor before, during, and after the scheduled event to safeguard persons and vessels during the longboat races. A regulated area is a water area, shore area, or water and shore area, for safety or environmental purposes, of which access is limited to authorized persons, vehicles, or vessels. The statutory basis for this rulemaking is 33 U.S.C. 1233, which gives the Coast Guard, under a delegation from the Secretary of the Department of Homeland Security, regulatory authority to enforce the Ports and Waterways Safety Act.

The Captain of the Port Honolulu has determined that potential safety hazards exist to the longboats, longboat crew members, and other persons and vessels involved with the event due to the longboats limited maneuverability within the port and large amount of spectator vessels and commercial traffic drawn to the event. The purpose of this rule is to ensure safety of vessels and navigable waters in the safety zone before, during, and after the event.

### **IV. Discussion of Comments, Changes, and the Rule**

As noted above, we received no comments on our NPRM published January 18, 2017. However, after the NPRM period, Coast Guard was notified by the event sponsor that an additional event occurs on April 17 annually in celebration of American Samoa's Flag Day. The Coast Guard is amending this regulation to include this event.

This rule will create a permanent special local regulation in Pago Pago Harbor. The regulated area will close the harbor to all vessels not authorized by the COTP for entry into, transiting, or anchoring within the port for the duration of the event. The COTP will authorize registered participants, support vessels, and enforcement vessels to enter and remain in the area. No other vessels will be permitted to enter the regulated area without obtaining permission from the COTP or a designated representative. The harbor will remain closed until the Coast Guard issues an "All Clear" after races have concluded and the harbor is deemed safe for normal operations. This rule will not require any vessel already moored to evacuate the port, provided they are moored in such a way that they do not interfere with the event.

The COTP will use all appropriate means to notify the public when the special local regulation in this rule will be enforced. Such means may include publication in the Federal Register a Notice of Enforcement, Broadcast Notice to Mariners, and Local Notice to Mariners. The regulatory text appears at the end of this document.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of

available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-day of the Special Local Regulation. Vessel traffic will be able to safely transit through the event with prior coordination and approval by the Coast Guard Captain of the Port, or designated representative. Furthermore, the annual events occur during times of the year when commercial vessel traffic is normally low. Moreover, The Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the regulation.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received zero comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit through the regulated area may be small entities, for the reasons stated in section V.A above, this rule will not have a

significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary and limited safety zone in Pago Pago Harbor. It is categorically excluded from further review under paragraph 34(h) of Figure 2-1 of Commandant Instruction M16475.ID. It is categorically excluded from further review under paragraph 34(h) of Figure 2-1 of the Commandant

Instruction. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

#### **PART 100--SAFETY OF LIFE ON NAVIGABLE WATERS**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233.

2. Add § 100.1401 to read as follows:

#### **§ 100.1401 Special Local Regulation; Fautasi Ocean Challenge Canoe Race, Pago Pago Harbor, America Samoa.**

(a) Location. The following regulated area is established as a special local regulation: Breakers Point (eastern edge of Pago Pago Harbor entrance) thence southeast to 14° 18'47"S, 170° 38'54.5"W thence southwest to 14° 19'03"S, 170° 39'14"W, thence



northwest to Tulutulu Point and then following the coastline encompassing Pago Pago Harbor. This regulated area extends from the surface of the water to the ocean floor.

(b) Effective period. These annual events occur on four separate dates to include: April 17; and three days to include Friday, Saturday or a holiday weekday, in November between the week of Veteran's Day and the Thanksgiving weekend, lasting between 7 a.m. to 4 p.m. each day. The Captain of the Port Honolulu will establish specific enforcement dates that will be announced in advance by Notice of Enforcement, Local Notice to Mariners, Broadcast Notice to Mariners, and prior event outreach, including local advertisement and on-scene designated representatives prior to and during the event.

(c) Regulations. (1) All persons and vessels not registered with the sponsor as participants or support/enforcement vessels are considered spectators. The "support/enforcement vessels" consist of any territory or local law enforcement vessels and sponsor-provided vessels assigned or approved by the Captain of the Port Honolulu to patrol the regulated area.

(2) No spectator shall anchor, block, loiter or impede the transit of participants or support/enforcement vessels in the regulated area during the enforcement dates and times, unless cleared for entry by or through a support/enforcement vessel.

(3) Spectator vessels may be moored to a waterfront facility within the regulated area in such a way that they shall not interfere with the progress of the event. Such mooring must be complete at least 30 minutes prior to the establishment of the regulated area and remain moored through the duration of the event.

(d) Informational broadcasts. The Captain of the Port Honolulu will establish enforcement dates and times with a Notice of Enforcement. If circumstances render enforcement of the regulated area unnecessary for the entirety of these periods, the Captain of the Port or his designated representative will inform the public through broadcast notices to mariners that the regulated area is no longer being enforced. The harbor will remain closed until the Coast Guard issues an “All Clear” for the harbor after the race has concluded and the harbor is deemed safe for normal operations.

(e) Penalties. Vessels or persons violating this rule may be subject to the penalties set forth in 33 U.S.C. 1233.

Dated: September 21, 2017

M.C. LONG,  
Captain, U.S. Coast Guard,  
Captain of the Port Honolulu

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